

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

Robert M. Sticha
Petitioner

v

Department of Insurance and Financial Services
Respondent

Case No. 13-936-L
Docket No. 13-016209-DIFS

Issued and entered
this 27th day of February 2014
by Randall S. Gregg
Special Deputy Director

FINAL DECISION

I. BACKGROUND

This case concerns the application of Robert M. Sticha (Petitioner) for a nonresident insurance producer license.

In September 2013, the Petitioner, a resident of Minnesota, applied for a nonresident insurance producer license in the state of Michigan. On October 8, 2013, the Department of Insurance and Financial Services (Respondent) issued to the Petitioner a Notice of License Denial and Opportunity for Hearing. The denial was based on the Petitioner's disclosure of a misdemeanor conviction in Minnesota in 2001. Petitioner challenged the license denial by filing a Petition for Contested Case Hearing. A hearing, conducted by telephone at the Petitioner's request, was held on January 8, 2014.

The administrative law judge issued a Proposal for Decision (PFD) on January 22, 2014, recommending that the license denial be upheld. The Petitioner did not file exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Comm*, 136 Mich App 52 (1984). The PFD is attached and made a part of this Final Decision.

II. FINDINGS OF FACT

The Director finds that on July 25, 2001, the Petitioner was convicted in Minnesota of misdemeanor theft. The Petitioner collected mortgage fees from clients and kept the money for his own personal use while telling his employer, falsely, that he had waived the fees. This, and the other findings of fact in the PFD, are adopted and made a part of this final decision.

III. CONCLUSIONS OF LAW

Section 1239(1)(h) of the Michigan Insurance Code (Code), MCL 500.1239(1)(h), provides:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

* * *

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

The conduct which resulted in his criminal conviction establishes that the Petitioner engaged in dishonest practices and demonstrated untrustworthiness in the conduct of business. Under section 1239(1)(h) of the Code, an individual who has engaged in such conduct must be denied an insurance producer license.

The Petitioner has not demonstrated that he meets the criteria for licensure pursuant to Section 1206a of the Code, MCL 500.1206a. The Petitioner was properly denied a Michigan non-resident insurance producer license under Section 1239(1)(h) of the Code, MCL 500.1239(1)(h).

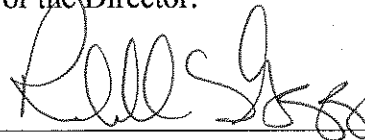
The conclusions of law in the PFD are adopted and made a part of this final decision.

IV. ORDER

The refusal to issue an insurance producer license to Robert M. Sticha is upheld.

Annette E. Flood
Director

For the Director:



Randall S. Gregg
Special Deputy Director

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 13-016209-DIFS

**Robert M. Sticha,
Petitioner**

Case No.: 12-936-L

v

**Agency: Department of
Insurance and
Financial Services**

**Department of Insurance and Financial
Services,
Respondent**

Case Type: DIFS-Insurance

Filing Type: Appeal

_____/

**Issued and entered
this 22 day of January, 2014
by: Kandra Robbins
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding under the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced with the issuance of a Notice of Hearing dated December 12, 2013, scheduling a contested case hearing for January 8, 2014. The Notice of Hearing was issued pursuant to a Request for Hearing received by the Michigan Administrative Hearing System on December 9, 2013, and an Order Referring Petition for dated December 6, 2013, issued by Teri L. Morante, Chief Deputy Commissioner of the Department of Insurance and Financial Services under the provisions of the Insurance Code.

Attached to the Request for Hearing was a copy of a Notice of License Denial and Opportunity for Hearing, dated October 8, 2013 and the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, dated October 6, 2013.

On January 8, 2014, the hearing commenced as scheduled. Robert Sticha, Petitioner, appeared by telephone on his own behalf. William Peattie, Administrative Law Specialist, appeared as a staff attorney representative on behalf of the Department of Insurance and Financial Services, Respondent.

Petitioner testified on his own behalf. He did not present any other witnesses or offer any exhibits into evidence. Jill Huiskens, Licensing Director, testified on behalf of Respondent. The following exhibits were offered by Respondent and admitted into the record as evidence:

1. Respondent's Exhibit No. 1 is a copy of the online record of Petitioner's Individual License Application, dated September 10, 2013.
2. Respondent's Exhibit No. 2 is a National Insurance Producer Registry Attachment Warehouse documents consisting of a letter of explanation from Petitioner, State of Minnesota Carver County Criminal Complaint and a Carver County Register of Action for Case No. 10-K9-01-00264.
3. Respondent's Exhibit No. 3 is a copy of a Notice of License Denial and Opportunity for Hearing issued by Jean M. Boven, Director Office of Insurance Licensing and Market Conduct, dated October 8, 2013.
4. Respondent's Exhibit No. 4 is a copy of the Notice of License Denial and Opportunity for Hearing and Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, dated October 6, 2013.

The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The central issue presented is whether Respondent has properly denied Petitioner's application for a non-resident insurance producer license under Sections 1206a(1) and 1239(1)(h) of the Insurance Code. These sections provide in pertinent part:

Sec. 1206a. (1) **Unless denied licensure under section 1239**, a nonresident person shall receive a nonresident insurance producer license if he or she meets all of the following:

- (a) Is currently licensed as a resident and in good standing in his or her home state.
- (b) Has submitted the proper request for licensure and has paid the applicable fees required by section 240.
- (c) Has submitted or transmitted to the commissioner the application for licensure that the person submitted to his

or her home state or a completed uniform application as required by the commissioner.

- (d) The person's home state awards nonresident producer licenses to residents of this state on the same basis. MCL 500.1206a(1). (Emphasis added).

Sec. 1239. (1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner **shall refuse to issue a license under section 1205 or 1206a**, for any 1 or more of the following causes:

* * *

- (h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. MCL 500.1239(1)(h) (Emphasis added)

FINDINGS OF FACT

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

1. On or about September 10, 2013, Petitioner submitted an application with Respondent to become licensed as a non-resident insurance producer in the State of Michigan. [Resp. Exh. 1].
2. Petitioner responded "yes" on the application to the question asking whether he had ever been convicted of a crime. [Resp. Exh. 1].
3. On or about January 24, 2001, Petitioner was charged with four counts of Theft of property exceeding \$2,500.00. [Resp. Exh. 2]
4. On July 25, 2001, Petitioner pled guilty to Gross Misdemeanor charge of Theft in Carver County, Minnesota. The four previous counts were dismissed. [Resp. Exh. 2]

5. On or about December 5, 2012, Jean M. Boven, Director, Office of Insurance Licensing and Market Conduct within the Department of Insurance and Financial Services, Respondent, issued a Notice of License Denial. [Resp. Exh. 3].
6. On or about October 6, 2013, Petitioner submitted Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License. [Resp. Exh. 4]
7. A properly noticed hearing was held on January 8, 2014, at which Petitioner testified by telephone.
8. Petitioner credibly testified that he was truthful on his application for licensure in Michigan by indicating that he had been convicted of a crime.
9. Petitioner admits that he pled Gross Misdemeanor Theft. Petitioner admits that he charged clients mortgages fees. He informed his employer that he waived the fees. He then deposited the fees in his personal account.
10. Petitioner's actions in regards to his employer and the clients are a fraudulent or dishonest practice.

Respondent has the burden of proof in this matter to show by a preponderance of the evidence the legal basis for its action to deny Petitioner's application for licensure. See MCL 500.1239(2).

Under Sections 1206a and 1239 of the Insurance Code, *supra*, the Commissioner shall deny an application for a non-resident insurance producer license where an applicant has used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business. See MCL 500.1206a(1) and MCL 500.1239(1)(h).

Based on the above findings of fact, it is concluded that Respondent has met its burden of proof. A preponderance of the evidence shows that Petitioner was properly denied licensure as a non-resident insurance producer in the State of Michigan under Sections 1206a(1) and 1239(1)(h) of the Insurance Code.

PROPOSED DECISION

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order;
2. That the Commissioner deny Petitioner's application for a non-resident insurance producer license under Sections 1206a(1) and 1239(1)(h) of the Insurance Code; and
3. That the Commissioner take any other action in this matter deemed appropriate under the applicable provisions of the Insurance Code of 1956, as amended.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.



Kandra Robbins

Administrative Law Judge